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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/403,800	02/22/2000	DAVID BLEASDALE TOLMIE	DUMMER9.001	7708

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EXAMINER

POPOVICS, ROBERT J

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 01/29/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/403,800

Applicant(s)

Tolmie et al.

Examiner

Popovics

Group Art Unit

1724

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 11/4/02

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 33-62 is/are pending in the application.

Of the above claim(s) 36, 56-57 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 33-35, 38-55 AND 58-62 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 12

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 33-35, 38-55, 58-62 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hirshstein (2,284,737).

See Fig. 1 of Hirshstein. Any limitations not expressly disclosed are submitted to be inherent, or alternatively, obvious in view of that which is conventionally known in the art.

4. Claims 40-55 and 58-59 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pravicha et al. (745,519).

See Fig. 1 of Pravicha et al. Any limitations not expressly disclosed are submitted to be inherent, or alternatively, obvious in view of that which is conventionally known in the art.

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Response to Arguments

5. Applicant's arguments filed June 25 and November 9 of 2002 have been fully considered but they are not persuasive. Applicants have argued that ***"the separator disclosed in the Hirshstein reference is intended to run 'liquid full', and then there is no capability for (or intention of) lowering of the operating water level to provide capacity to accumulate and substantially increase the holding time for inflowing waste water."*** The Examiner disagrees with this statement. The Hirshstein apparatus is seen to meet the cited functional recitations. Applicants have failed to identify or even assert that claimed structural differences exist between the instant claimed invention and the device of Hirshstein. Contrary to Applicants' assertions, there is a "low level," which Hirshstein refers to as a "normal water level" (4a, lines 25-30), and a higher level, as is clearly evident in Figure 1, and described at 4a, lines 1-5. With respect to the rejection in view of the Pravicha reference, Applicants have argued that ***"this invention does not address the invention of the present application as claimed which claims the concept of lowering (by means of a siphon) the operating water level to provide capacity to store incoming oil-water mixture and thus beneficially and substantially increase the time available for oil-water separation."*** It is noted that Pravicha discloses siphon 9 in Fig. 1. Again, no attempt has been made by Applicants to point out structural differences between Pravicha and the instant claimed invention. A review of the claims of the applied references is not seen to aid in this regard.

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Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner Robert Popovics whose telephone number is (703) 308-0684.



Robert James Popovics

Primary Examiner

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January 27, 2003